



MITIGATING IPR CONFLICTS UNDER SPORTS LAW

¹ J. Kavya Sree, ² Dr.M. Sreeramulu, ³ J.Divya Sree

¹ Research Scholar, ²Asst.Professor, ³ Law Graduate

¹ Sri Krishnadevaraya University, Department of Law, Ananthapuramu, Andhra Pradesh.

Abstract:

Intellectual Property Rights (IPR) in sports is crucial for protecting the commercial interests of athletes, teams, and organizations. As sports evolve into lucrative businesses, conflicts over IPR ownership and usage have intensified. Effective mitigation strategies include robust registration processes, clear contractual agreements, and legal frameworks that addresses emerging issues like personality rights and ambush marketing. Courts play a vital role in enforcing these rights, providing remedies for infringements. By fostering a comprehensive understanding of IPR, stakeholders can better navigate disputes and enhance the sustainability of sports as a commercial enterprise.

Index Terms: Intellectual property rights, Sports law, Trademarks, Patents, Ambush marketing. –

INTRODUCTION

TITLE OF THE ESSAY: “MITIGATING IPR CONFLICTS UNDER SPORTS LAW”.

SPORTS LAW: It is the combination of laws that apply to athletes and the sports they play. A sport law touches on various matters like including contract, tort, agency, antitrust, trademark, sex discrimination, criminal and tax issues.

IPR: It is a category of property that includes intangible creations of human intellect. There are many different types of intellectual properties like copyrights, patents, trademarks, trade secret. The purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods.

ROLE OF IPR UNDER SPORTS LAW: Sports really show intellectual property in action. The innovation and creativity are key drivers in world of sports. In sports field, inventors and creators are behind the back to push the limits, creating new opportunities, enjoyment and for athletes to better performance at sports.

Intellectual property lies at the core of huge commercial opportunities offered by world of sport. IPRs like patents, copyright, trademark, broadcasting rights, designs, they help to legal protection and also to secure legally economic value of sport. The role of IPR is very important in sports law for stimulation of growth in sports industry, and enables sports organizations to finance high profile events, and provides sports development in countries. Now, sports industry has growing impact on world economy, creating jobs, and investing in public infrastructure and mobilizing resources.

The sports industry has always been a massive sector across the world bringing together entertainment, games, cultures and monetary business. IPRs are valuable assets that are used as marketing tools towards the branding of sporting games and connected events, sports clubs, teams and celebrity status etc. Marketing

techniques are applied in creation, maintenance, popularization, and sustenance of distinctive marks, logos and personalities, while copyrights vesting in brand and image creation are protected to reap benefits on an exclusive basis considering the very nature of competition in sports.

The sports goods industry has more importance given to IPR protection. For example Michael Phelps, the most known Olympian of all time, has partnered with Speedo since 2001. Speedo's IQ fit technology developed by aqua lab, the fastskin3 super elite and elite goggles, ensure optimal hydrodynamics. This will improve performance at his game level. The sports industry is wide ranging business encompassing sale of food and sports memorabilia as well as sale of media and sponsorship deals. The technology will help to perform more efficient at game level and technology will be protected by IPR.

Sporting goods companies, whether large or small, spends millions of dollars each year developing new and improved products to benefit not only elite athletes but also amateurs and those enjoy wearing sportswear on day-to-day basis. A 2001 study by management consultant A.T.KEARNY estimates that the global sports industry is as worth as U.S\$620 billion. Many of the companies also invest significant sums in supporting talented young athletes in communities around the world youngsters with the promise of becoming the sports heroes of the future. The IP system and the protection it affords play a key role in enabling sporting manufacturers to continue to invest in researching and developing even more effective and affordable equipment for the athletes of day and tomorrow. German entrepreneur Adolf 'ADI' Dassler who founded Adidas was one of the first to successfully market a technologically enhanced sporting good in the form of innovative semi-cut football sports shoe with a lightweight nylon sole and screw in studs. By wearing those boots the German team clinched victory from Hungary in 1954 world cup final in Bern, Switzerland. As heavy rain had made conditions very slippery the German team opted to use Adi Dassler's innovative boots. The technology and used design are to be protected by intellectual property rights not by to be robbed by others or copied by others. Today, leading sports goods manufacturers such as Nike, Puma, Asics and others-spend more than 1% of their annual global turnover on R and D.

Sports need intellectual property rights to protect their design, trademark and also technology. For example a sports shoe that is used by sports person may be protected by several intellectual property rights. In sporting field, patents protect the technology used to develop the shoe. The look of the shoe is protected by the designs. The shoe is varied from other shoe by trademark and it protects reputation of shoe. Copyright protects any artwork and the audiovisual creations used to publicize the shoe. The different types of IP Rights will give protection for the product that are been used in the sporting field.

The aims of protecting the ownership, intellectual property rights have been adopted by many countries in their industries worldwide. IPR provide an incentive to the individual for new creations. The IP Rights protect the expression of an idea and not the idea itself.

IPR CONFLICTS:-Although there are many advantages of IP protection in sports industry nevertheless there are huge problems as well. We can understand by a case study of International Olympic Committee (IOC) where the Olympic symbol has been protected under Nairobi Treaty on the protection of Olympic symbol, which follows the strict rules governing the usage of the symbol, which affects the other areas of

branding for games as well. Due to such stringent rules, many companies find it difficult to use Olympic symbol as a part of their marketing strategy. These companies then resort to “AMBUSH MARKETING”.

Ambush marketing is the term used when a brand attempts to tie itself to a large event, without being a sponsor of said event. This means the brand or company avoids paying fees, but succeeds in generating commercial revenue from their actions. In sports industry, a chain of title has relevance in sports agreements which incorporate the legal release of talent of sportsman, so that their work, images, personality rights etc can be used by another for profit. In India, sports leagues like the Indian Premier League (IPL), Hockey India League, Indian Super League, Indian Badminton League, Pro-Kabaddi have been formed, which are owned by individuals or partners while they are selling the various IPR'S form a part of event.

When there is unauthorized use of IP, eventually lead to IP disputes. With an increase in commercial exploration of IPR in sports various legal issues that can arise in sports industry that include brand abuse, misuse in bad faith, misbranding, and infringement of trademarks, using name of sports personality, without permission or without paying any license fee or royalty copy infringement with regard to sports equipments, artwork in logo, broadcasting without license, piracy in audiovisual recordings, use of copyright software without license or royalty, use of design without license, the use of patented technology without authorization from the owner of the patent. These issues can lead to damage of goodwill, unfair trade practices, unfair competition and commercial disputes which ultimately lead to huge commercial losses which in turn defeats to principal purpose of exploring the commercial aspects of the sports industry. The owners of intellectual properties in the field of sports should be aware about the importance of IP and protect them by doing the registration, obtaining proper licenses and making contracts, in order to protect the value of sports and sporting assets as well as actively protecting intellectual property from the infringement and abuse. Importance of legal contractual agreements must be identified, for protecting stakeholders and their financial interests.

MITIGATING MEASURES FOR IPR CONFLICTS :-There should be legal protection that should extend long enough for the originator of the idea to recover the initial investment and generate a reasonable profit. Although it is not possible nor advantageous to completely eliminate competition, certain types of legal protection are available to owners of sports competition properties, provided they know the law and take the necessary measures to safeguard their ownership interests.

Intellectual property rights are designed to promote the development and publication of creativity, technology and innovation. These new discoveries and creative executions improve the ability to compete in global market place. Legislation regulating intellectual property rights forms the legal framework of modern sports marketing¹. Most of the countries have laws protecting patents and trademarks. There are a number of treaties between countries that facilitate and protect foreign registration. These treaties include the Paris convention of 1883, the Patent Cooperation Treaty (PCT), the world intellectual property organization, the European Patent Convention, the OAPI Countries and ARIPO Countries². The right to restrain others from using intellectual property serves as a deterrent to direct competitors. It has effect of

¹ Opie, supra note 3.

² BURTON A. AMERNICK, PATENT LAW FOR THE NON LAWYER.

creating a monopoly ,thus increasing the perceived value of protected property .The added value vested in IP can generate profits for owners when these rights are licensed to others through franchise sponsorship ,broadcast and merchandising agreements .If anyone using then ,the licensor is compensated by the licensee for the time and effort invested in creation of intellectual property .The compensation may come from franchise fees ,licensing fees ,sponsorship fees ,on merchandise sales .

A trademark is a mark of authenticity designed to set one brand apart from another service marks are afforded the same protection as trademarks .Words ,numbers ,shapes ,drawings that meet the test of distinction can be protected .A person's image can be used as a trademark .For example ,the marks Ralph Lauren ,Ford and McDonald's are all personal names that serve as strong as effective trademarks .According to TRIPS Agreement ,country members of the world trade organization must have laws that provide for trademarks and their protection .

In *Motto Enterprises, Inc .V. Red sand, Inc* ,the court noted that images and likeness of famous personalities are protectable³ .A trademark serves the following functions and that will reduce intellectual property rights conflicts under sports law .There are the :-

- (1) It designates the source of origin of a particular product or service ;
- (2) It identifies and distinguishes a particular product or service from others ;
- (3) It denotes a standard of quality embodied in the product or service signifying that all goods bearing the trademark are of equal quality ;
- (4) It symbolizes the goodwill of its owners ;
- (5) It represents a substantial advertising investment and is treated as a species of property.

In sports field ,trademarks are used to promote team loyalty and the sale of licensed merchandise .Registered marks and common law marks are afforded protection from infringement or delusion in the area where they are used ,so as long as they are used .The trademark protection law registration act of 1988 requires that an "Affidavit of use" be filed by the registrant after five years to certify that the mark is still in use in commerce .A trade secret is also used to reduce IPR conflicts under sports law .It is defined as "information ,including formula ,pattern ,compilation ,program ,device ,method ,technique or process that :-

1. Derives independent economic value ,actual or potential ,from not being generally known to ,and not being readily considerable by proper means ,by other persons who can obtain economic value from its disclosure or use ,and
2. Is the subject of efforts that are reasonable after the circumstances to maintain the secrecy⁴.
3. If it is present in public domain, then it is not considered a trade secret, nor can it be held to any confidentiality agreements .A trade secret is protected until it remains a trade secret⁵.

Copyrights protect the expression of ideas ,but not the actual ideas ,process or method of operation .It also reduces the conflicts in IPR .Owners of copyrights can license their rights to others .Copyright and related

³ ANTHONY L.FLETCHER AND DAVID J.KERA, TRADEMARK LAW HANDBOOK & 7.03 (1995); *M'OTTO ENTREPRISES INC .V.REDSAND, INC*, 831F SUPP.1491 (W.D.WASH.1993).

⁴ UNIFORM TRADE SECRET ACT & 1 (1986).

⁵ GLICKMAN, SUPRA NOTE 101, AT & 3A.03 [2].

rights provide protection against unauthorized retransmission of broadcasts and underpin the relationship between sport and television and other media .Television and media organizations pay huge sums of money for exclusive right to broadcast sporting events live .For example ,of US \$3.7 billion in total revenues (excluding ticket sale) generated by the 2010 FIFA World cup in South Africa, two-thirds or US \$ 2.4 billion was derived from the sale of broadcasting rights .The sale of marketing rights brought in another US \$ 1.1 billion ,with the remainder accounted for by sale of hospitality rights and licensing .In the many countries ,an industrial design must be registered in order to be protected under industrial design law .However protection is given only in the country where the design is registered .

WIPO's Hague system provides an easy and cost-effective way to obtain protection for an industrial design in up to 57 countries .WIPO awareness raising and training activities look at successful IP rights strategies and monetization of IP assets to promote the growth of sport as a tool for development .Activities also address challenges for creating an enabling regulatory environment and how to ensure effective action against IP violations that erode sponsors confidence and the benefits associated with the hosting of major sport events .IP awareness raising and training programs are demand driven and tailored to the specific social and cultured context of each country .

These activities will target a wide range of stake holders such as government and public bodies ,enforcement officials ,judiciary ,legal Practitioner, athletes ,sports good manufacturers clubs ,broadcasting persons ,media companies and television .The royalties that broadcasters earn from selling their exclusive footage to other media outlets enable them to invest in the organizational and technical undertaking involved in broadcasting sports events to millions of fans all over the world .This is made possible through the protection of IP system provides for their broadcasting rights .

Intellectual property rights along with the legal protection helps the economic value of sports .Good management of intellectual property in return maximize the economic returns .In the most of the countries ,while the patents and design rights are extremely important in safeguarding cutting edge technologies that have broad consumer appeal ,sporting goods companies live by trademarks that underpin their brand identity .The ability to obtain trademark protection rapidly and cost effectively in multiple markets is essential in today's commercial environment .WIPO's international trademark registration services can be particularly useful in this respect .It is the first step in building the brand recognition and value .

There is no particular law that protects the proprietary material and resolves all the issues that arise out of them .Numerous laws are resorted to in order to safeguard the business interests involved in sports .IP laws form a chief part of such laws and are often pressed in to service in tackling various issues .Domain names in sports which are also treated as trademarks by Indian courts play a substantial role in protection of IPR associated with sports .Domain names build brand image ,portability ,and search engine optimization .

There are new formats revolutionizing the world of sport and the manner in which sports content is consumed. In the digital age, sport is competing hard for public's attention and in doing so, is becoming increasingly shorter, faster and in more dynamic.

The establishment of regulatory framework for IP protection is making reduction in IPR conflicts. The regulations should define the manner in which assets should be protected as follows :-

1. Effective protection of symbols, emblems and event names through trade mark law.
2. Adequate procedures and remedies against infringement.
3. Protection against online privacy to protect broadcasting rights.
4. Protection of designs.
5. Importance of data mining and big data in sport and
6. Protection against ambush marketing⁶.

In order to broadcast a sport event it is necessary to obtain the authorization of original and derivative owners of corresponding media rights. The protection of broadcasting rights is a form of IP because the sale of these rights is a major source of revenue to event organizers. The transmission is of a contemporaneous event at which the focus of the media is to provide a running commentary on the activity between the opposing parties. The digital revolution through the internet and the web has brought the problem for sports broadcasters who have come to rely on profitable but restrictive compact to sustain their operation and public profile.

The problem of privacy is real because the commercial value and popular appeal of live sports events causes the vulnerability can be of TV broadcasts to online streaming. Although illicit streaming services are regularly taken down, directories and sites can be located by users through online searches and from bulletin boards where URLs are circulated via posts, live chat or private message exchange between users. This is because sports events like "most vulnerable to have peer to peer streaming", as opposed to distributive after the point of release through file sharing protocols like Bit torrent and file locker sites⁷.

Birmingham and David argue "using the dual use defense site hosts[online service provider] who may have knowledge of the copyright violations while providing services can defend themselves by stating they are specifically reported unaware remain of their existence at the time of transmission. However, the more that "sports organizations and broadcasters persevere with a protectionist mind set by failing you invest seriously in reliable and widely access able authorized services, the more likely it is that online word-of-mouth among users will continue to expand a avoidance for illicit streams⁸."

The IP protection of broadcasting rights reasonably consistent financial returns and prompts and in the internet cultures of sports leagues occupies prominent space in broadcast schedules. The medium of

⁶ .Carolina pina, supra 20 ,at 11

⁷ .Ibid p 43.

⁸ Ibid pp 76-77

television was used as a reliable media technology even within the arrival of cable and satellite television but the web tend to be as risky as liable to be pirated. The accepted media industry discourses around internet piracy contribute to the framing of those technologies, reinforced by the knowledge that is onerous and probably impossible to orchestrate completely foolproof blocking, filtering, and online censorship of sites.

There is also a need for further protection of broadcasting of a sporting event which requires the measures of efficiently remove advertising from illegal linking sites, and eliminate any other kind of fund for their support. The promotion of effective notice and deletion of illegal content and linking sites is considered necessary for the tracing the broadcasting pirates of sporting events and removing their source of funding.

The law providing an incentive to create by giving legal protection to authors who otherwise would not be protected from free riders copying and distributing their work without having to invest any creative mental labor. This was IP protection has been described as “necessary evil- a restriction on the free flow of information to the minimum extent necessary to encourage needed investment in innovation⁹”.

The investment in sports has several positive effects for clubs at grass roots level; however it is not necessary to privatize such vast areas of sports to receive these ends. The balanced system that would need to be implemented in a developing sports environment will still provide financial rewards to encourage business investment whilst also maintaining the public aspect of sport.

CASE LAWS: JT INTERNATIONAL SA V. COMMONWEALTH OF AUSTRALIA [2012] HCA 43:

There are always been purposive elements reflecting public policy considerations which inform the statutory creation of intellectual property rights. The public policy dimensions of trademark legislation and the contending interests which dimensions accommodate was referred to in campo mar interests which such dimensions accommodate was referred to an campo mar societal, LIMITADA V.NIKE INTERNATIONAL LTD. The observation in this case that Australian trademarks law has manifested from time to time a varying accommodation of commercial and the consuming public’s interests applies with varying degrees of intensity to other intellectual property rights created by the statue. Intellectual property laws create property rights.

VICTORIA’S SECRET INC V. EDGARS STORES LTD [428/92] [1994] ZASCA 43:

A trademark is purely a territorial concept; it is legally operative or effective only within the territory in which it is used to and for which it is to be registered. Hence, the proprietorship, actual use, or proposed use of trademark mentioned in [THE TRADEMARKS ACT] is all premised by subsection to be within the [Republic of South Africa].

EXCLUSIVE RIGHTS VS. PUBLIC INTEREST:

⁹. MARK LEMLEY, ROMANTIC AUTHORSHIP AND THE RHETORIC OF PROPERTY 75 TEXAS LAW REVIEW 871 (1997).

CARTOON VS. MAJOR LEAGUE BASEBALL PLAYERS [1996]:

Cartoons parody cards are protected under first amendment. The cards provide social commentary on public figures, first rate basketball figures, which, furthermore, are involved in a significant commercial venture – the professional basketball league. Although it is not a political discussion, these types of comments on important social institutions are protected.

CONCLUSION: It dealt with protecting proprietary interests in sports entertainment events from the perspective off the event organizer, deemed to represent the interests of owners and investors. If they are protected, there will be less IPR conflicts in sporting field. The impact of IPR in INDIA has led the government to take steps to enhance the IPR regime in the country. In 2016 it approved the NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY, which will lay the future roadmap for intellectual property in INDIA.

It will mitigate IPR conflicts by execution of their enforcement of rights and speedy solving of court cases. It aims to increase awareness, stimulate the creation of IPRs, and ensure strong and effective IPRs laws, redressed and modernization of IPR administration, among other things. Under this policy the cell for IPR promotion and management [CIPAM] was created for simplifying and streamlining of IP processes a part from undertaking steps for furthering IPR awareness, commercialization, and enforcement.

The protecting of patents, trademarks, and copyrights, are vital for innovation and development. It is also reducing IPR conflicts. Understanding the legal doctrines and their effort on business management and marketing decisions in sports is crucial for long term finance operating. Then there will be mitigation of IPR conflicts under sports law.

THE END.....